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REMARKS

This is a full and timely response to the final Office Action mailed May 18, 2007, in which new grounds of rejection have been raised. Reconsideration of this application in light of the following remarks is respectfully requested.

Claims Status:

Claims 2, 16, and 31 were previously canceled without prejudice or disclaimer. By the present paper, no claims are added or cancelled. Amendments to claim 69 are proposed. Consequently, claims 1, 3-15, 17-30 and 32-69 are currently pending for further action.

35 U.S.C. § 112, FIRST PARAGRAPH:

The recent Office Action rejected claims 62 and 64-68 under 35 U.S.C. § 112, first paragraph, as lacking a supporting written description in the application as originally filed. (Action of 5/18/07, p. 2). For at least the following reasons, Applicant respectfully traverses this rejection.

With respect to claims 62 and 66, claim 62 recites "wherein the dynamic auction component is configured to treat the dynamic bids as straight, non-proxy bids." Similarly, claim 66 recites "treating the dynamic bids as straight, non-proxy bids." This subject matter is clearly supported in Applicant's specification as originally filed at, for example, paragraph 0038. Paragraph 0038 states that the "virtual auction can allow for proxy bids to be submitted during the virtual auction, or in the alternative can treat any submitted bid that is higher than the

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required minimum bid as a straight bid to be submitted directly into the auction.” (Applicant’s specification, paragraph 0038).

With respect to claims 64 and 68, claim 64 recites “wherein the dynamic real-time auction component does not include a live in-person auction.” Claim 68 similarly recites “at least one server controlling the dynamic real-time bidding without using a human auctioneer.” This subject matter is clearly supported in Applicant’s specification as originally filed at, for example, paragraph 0037. Paragraph 0037 clearly states that the participants in the auction are at not present “in person” but are located at diverse geographic locations and communicating via networked computers.

With respect to claim 65, claim 65 recites “wherein the one or more servers is configured to act as an auctioneer in the dynamic real-time auction component, the dynamic real-time auction component being configured to operate without a human auctioneer.” This subject matter is clearly supported in Applicant’s specification as originally filed at, for example, paragraph 0033. Paragraph 0033 clearly states that “the website server acts as *the* auctioneer and controls the auction.” (Emphasis added). This clearly provides support for embodiments which exclude a human auctioneer as claimed.

With respect to claim 67, claim 67 recites “wherein the at least one dynamic bid includes a plurality of dynamic bids received over the computer network, said applying including applying the plurality of dynamic bids against one another.” This subject matter is clearly supported in Applicant’s specification as originally filed at, for example, paragraphs 0029 and 0034.

For at least these reasons, the rejection under 35 U.S.C. § 112, first paragraph, should be reconsidered and withdrawn.

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**35 U.S.C. § 112, SECOND PARAGRAPH:**

The recent Office Action also rejected claim 69 under 35 U.S.C. § 112, second paragraph as being indefinite. While Applicant does not agree that claim 69 was indefinite, claim 69 has been amended herein as requested by the Examiner to clarify the claimed subject matter. Therefore, following entry of this amendment, the rejection of claim 69 under § 112, second paragraph, should be reconsidered and withdrawn.

Support for the amendment to claim 69 is found in Applicant's originally filed specification at, for example, paragraphs 0023 and 0037.

Entry and consideration of this amendment are proper under 37 C.F.R. § 1.116 for at least the following reasons. The present amendment makes only those changes requested by the Examiner to comply, in the Examiner's view, with § 112. The amendment does not raise new issues requiring further search or consideration. Further, the amendment proposed reduces the issues that might remain in the application in a potential appeal. Therefore, entry of the present amendment is proper under 37 C.F.R. § 116 and is hereby requested.

**Prior Art:**

Claims 33 and 54 were rejected as anticipated under 35 U.S.C. § 102(a) by WO 03/027806 to Johnson ("Johnson"). For at least the following reasons, this rejection is respectfully traversed.

Claim 33 recites:

An online auction system for enabling bidding over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder, comprising:

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one or more servers configured to provide an auction service having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction at least one item, *the item being offered for a pre-established duration of time*, the preliminary bidding component resulting in a final preliminary bid; and 2) a dynamic real-time auction component conducted over the computer network, beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time, the dynamic auction component offering for auction the at least one item from the preliminary auction component, the dynamic auction component defining a starting bid for the item in the dynamic auction component based on the final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.

(Emphasis added).

Applicant wishes to note the novel and useful purpose served by the preliminary bidding component, as disclosed and claimed by the Applicant. According to Applicant's specification,

The length of time of the preliminary bidding portion of the auction is determined by the entity or individual controlling the website offering the auction. It is contemplated that the length of time should be in terms of days to permit the items to be viewed and studied by all interested parties. Nonetheless, there are no explicit time frame parameters.

(Applicant's specification, paragraph 0030).

In this way, for a "pre-established duration of time" potentially interested buyers can get information about the items for sale before the dynamic real-time auction begins. Many potential buyers may only be interested in the auction for a particular item if that item is likely to be sold within a particular price range. Unfortunately, in prior art systems, there is no real way to predict in what price range the auction will end before the auction is actually conducted.

However, with Applicant's novel system, *increasing* bids are collected for a "pre-established duration of time" during the preliminary bidding component before the dynamic real-time auction begins. Thus, by reviewing the results of the preliminary bidding component, even if one did not participate in the preliminary bidding, some gauge is obtained as to the interest of the pool of buyers in, and the probable final price range of, the items for sale. Bidders can then

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choose to participate in or avoid the dynamic real-time auctions for specific items using this information.

In contrast, the prior art completely fails to teach or suggest this claimed subject matter. In particular, Johnson teaches a system in which an initial asking price for an item at auction is incrementally lowered at intervals until a first bid is finally received. Then, the auction proceeds based on that first bid. In the words of Johnson,

[a]ccording to the present invention, an auction for an item, may include a first phase in which an asking price for the item decreases at predetermined intervals when the auction is a seller's auction ..., and a second phase after the first phase in which the asking price starts at a level equal to a first bid placed by a first bidder during the first phase and periodically increases ... until no additional bids are received from the first bidder and/or additional bidders, the auctioned item being awarded to a last bidder in the second phase. (Johnson, p. 3, lines 12-20).

Thus, Johnson teaches nothing more than the traditional practice of every auctioneer to lower the initial bid or asking price until a first bid is received and then commence the auction from that point.

Johnson does not teach or suggest the claimed "preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction at least one item, the item being offered *for a pre-established duration of time.*" (Emphasis added).

By definition, the first phase of the Johnson auction can have no pre-established duration because it continues until, but not longer than is necessary to obtain, a first bid on the item.

Johnson further does not teach or suggest the claimed "dynamic real-time auction component conducted over the computer network, *beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time.*" (Emphasis added).

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"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Johnson of claim 33 should be reconsidered and withdrawn.

Claim 54 recites:

An online system for enabling sales over a computer network to remotely located purchasers who are utilizing computing devices for receiving information regarding a sale and transmitting bid information to the system, comprising:

one or more servers configured to provide 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for sale at least one item, the item being offered *for a pre-established duration of time*, the preliminary bidding component resulting in a final preliminary bid; and 2) a dynamic real-time bidding component conducted over the computer network, *the dynamic real-time bidding component beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time*, the dynamic real-time bidding component offering for sale the at least one item from the preliminary bidding component, the dynamic real-time bidding component defining a starting bid for the item in the dynamic real-time bidding component based on the final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.

(Emphasis added).

As demonstrated above, Johnson fails to teach or suggest the claimed preliminary bidding component conducted "for a pre-established duration of time." Johnson further fails to teach or suggest the claimed "dynamic real-time bidding component *beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time*."

(Emphasis added).

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"A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987) (emphasis added). See M.P.E.P. § 2131. For at least these reasons, the rejection based on Johnson of claim 54 should be reconsidered and withdrawn.

Claims 1, 5, 6, 15, 19, 20, 29-30, 32 and 63 were rejected as being unpatentable under 35 U.S.C. § 103(a) over Johnson in view of Official Notice. For at least the following reasons, this rejection is respectfully traversed.

Claim 1 recites:

An online auction system for enabling bidding over a computer network by remotely located bidders utilizing computing devices for receiving information to be provided to a bidder and transmitting bid information of the bidder, comprising:

one or more servers configured to provide an auction service having 1) a preliminary bidding component conducted over the computer network, the preliminary bidding component offering for auction a plurality of items, *each item being offered for a pre-established duration of time*, the preliminary bidding component resulting in a final preliminary bid for each of the plurality of items; and 2) a dynamic real-time auction component conducted over the computer network, *beginning after closing of the preliminary bidding component upon expiration of the pre-established duration of time*, the dynamic auction component offering for auction each of the plurality of items from the preliminary auction component, the dynamic auction component defining a starting bid for each of the plurality of items in the dynamic auction component based on the respective final preliminary bid from the preliminary bidding component, the dynamic auction component being configured to receive dynamic bids over the computer network and to apply the dynamic bids in real time.

(Emphasis added).

As demonstrated above, Johnson fails to teach or suggest the claimed preliminary bidding component conducted "for a pre-established duration of time." Johnson further fails to teach or suggest the claimed dynamic real-time auction component "*beginning after closing of the*

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*preliminary bidding component upon expiration of the pre-established duration of time."*

(Emphasis added). The officially taken notice in the Office Action does not address, and is irrelevant to, these failings of Johnson.

Under the analysis required by *Graham v. John Deere*, 383 U.S. 1 (1966) for supporting a rejection under § 103, the scope and content of the prior art must first be determined, followed by an assessment of the differences between the prior art and the claim at issue. In the present case, the content and scope of the prior art, as evidenced by Johnson, clearly did not include the claimed preliminary bidding component as disclosed and claimed by Applicant. The significance of this difference with the prior art is explained above, i.e., that the claimed preliminary bidding component provides an opportunity to gauge the price range of an upcoming auction before deciding whether to take the time and effort to participate in the auction. Given this significant advantage over the scope and content of the prior art, Johnson clearly cannot support a rejection of claim 1 under *Graham*.

In other words, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least these reasons, the rejection of claim 1 and its dependent claims based on Johnson should be reconsidered and withdrawn.

Claim 15 recites:

A method of conducting an auction over a computer network comprising:  
offering over the network a preliminary bidding on a plurality of items offered for  
auction, each item being offered *for a pre-established time period*;



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*accepting preliminary bids* resulting in a final preliminary bid for each of the plurality of items;  
closing the preliminary bidding upon expiration of said pre-established time period;  
offering over the network dynamic real-time bidding for each of the plurality of items from the preliminary bidding after said closing of the preliminary bidding;  
defining a starting bid for each of the plurality of items in the dynamic real-time bidding based on the respective final preliminary bid from the preliminary bidding;  
receiving at least one dynamic bid over the computer network during the dynamic real-time bidding; and  
applying the at least one dynamic bid in real time.  
(Emphasis added).

In contrast, as demonstrated above, Johnson does not teach or suggest a method like that claimed that includes “preliminary bidding” “for a pre-established time period.” For at least this reason, the rejection of claim 15 fails.

Additionally, claim 15 further recites “accepting preliminary bids resulting in a final preliminary bid for each of the plurality of items.” In contrast, as explained above, during the first phase, Johnson only accepts a single first bid. The first phase is then over and final bidding starts based on the single first bid. (Johnson, p. 3, lines 12-20). Thus, Johnson does not and cannot teach or suggest the claimed method including “accepting preliminary *bids* resulting in a final preliminary bid for each of the plurality of items.” (Emphasis added).

Using the *Graham* analysis, the content and scope of the prior art, as evidenced by Johnson, clearly did not include the method of claim 15 with preliminary bidding in which multiple bids are received “resulting in a final preliminary bid” after a “pre-established time period.” The significance of these differences with the prior art is explained above, i.e., that the claimed preliminary bidding component provides an opportunity to gauge the price range of an upcoming auction before deciding whether to take the time and effort to participate in the

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auction. Given this significant advantage over the scope and content of the prior art, Johnson clearly cannot support a rejection of claim 15 under *Graham*.

In other words, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." M.P.E.P. § 2143.03. Accord. M.P.E.P. § 706.02(j). For at least these reasons, the rejection of claim 15 and its dependent claims based on Johnson should be reconsidered and withdrawn.

Claim 29 recites:

A method for conducting an auction over a computer network comprising:  
conducting a first auction portion  
    offering a plurality of items for auction, each item being offered for a pre-established duration,  
    a first auction portion communication over the network causing a display of a first auction portion status, including a final first auction portion high bid for each of the plurality of items;  
    *closing the first auction portion upon expiration of the pre-established duration;*  
and  
conducting a second real-time virtual auction portion over the computer network after said closing of the first auction portion, the second real-time virtual auction portion  
    offering for auction over the computer network the plurality of items from the first auction portion,  
    defining a starting bid for each of the plurality of items in the second auction portion based on the respective final first auction portion high bid from the first auction portion,  
    receiving at least one dynamic bid over the computer network, and  
    applying the at least one dynamic bid in real time,  
    a second auction portion communication over the network causing a display of a second auction portion status, including, for a particular one of the plurality of items, a current high bid and a second auction portion countdown timer showing a running time until the current high bid will be deemed a winning bid unless a more favorable bid is received.

(Emphasis added).

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As demonstrated above, Johnson does not teach or suggest the claimed method including “conducting a first auction portion offering a plurality of items for auction, each item being offered for a *pre-established duration*.” (Emphasis added). For at least this reason, the rejection of claim 29 and its dependent claims should be reconsidered and withdrawn.

Claims 7-12, 21-26, 40, 50, 56 and 59 were rejected under 35 U.S.C. § 103(a) over Johnson and further Official Notice. This rejection is respectfully traversed for at least the same reasons given above with respect to the patentability of the independent claims.

Claims 3, 4, 13, 14, 17, 18, 27, 28, 34-39, 44-49, 55, 57, 58, 60 and 61 were rejected under 35 U.S.C. § 103(a) over Johnson and the Official Notice in combination with the teachings of WO 00/34899 to Handler (“Handler”). This rejection is respectfully traversed for at least the same reasons given above with respect to the patentability of the independent claims.

Claims 41 and 51 were rejected under 35 U.S.C. § 103(a) over Johnson and the Official Notice in combination with the teachings of U.S. Patent Application Publication No. 2006/0224497 to Walker (“Walker”). This rejection is respectfully traversed for at least the same reasons given above with respect to the patentability of the independent claims.

Claims 42, 43, 52 and 53 were rejected under 35 U.S.C. § 103(a) over Johnson and the Official Notice in combination with the teachings of Canada Patent No. CA 2329281 to Peterson

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("Peterson"). This rejection is respectfully traversed for at least the same reasons given above with respect to the patentability of the independent claims.

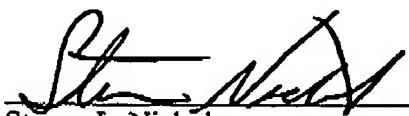
**Conclusion:**

In view of the above, each of the presently pending claims in this application is believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

It is believed that any additional fees due with respect to this paper have already been identified in any transmittal accompanying this paper. However, if any additional fees are required in connection with the filing of this paper that are not identified in any accompanying transmittal, permission is given to charge account number 18-0013 in the name of Rader, Fishman and Grauer PLLC. If the Examiner has any question or comments, he is kindly urged to call the undersigned to facilitate prosecution.

Respectfully submitted,

DATE: July 18, 2007



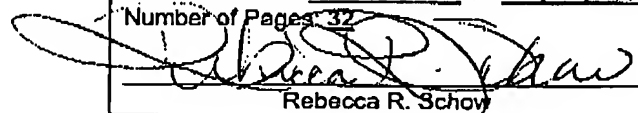
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